

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

**FILED BY**

*JP*  
**JUL 13 2005**

Thomas M. Gould, Clerk  
U. S. District Court  
W. D. OF TN, Jackson

RAYMOND WHITEHEAD,

Plaintiff,

VS.

No. 04-1236-T

JO ANNE B. BARNHART,  
Commissioner of Social Security,

Defendant.

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ORDER AWARDING ATTORNEY FEES

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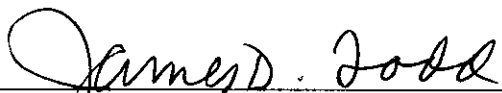
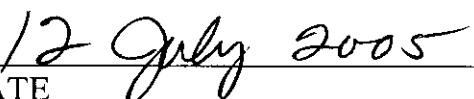
Plaintiff Raymond Whitehead filed this action to obtain judicial review of the Commissioner's final decision denying his Social Security benefits. On March 9, 2005, the court entered an order reversing the decision and remanding for further proceedings in accordance with sentence four of 42 U.S.C. § 405(g). Judgment was entered on March 4, 2005. Plaintiff has now filed a motion for an award of attorney fees in the amount of \$3,075.00, pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d). This amount was determined by the attorney's rate of \$125.00 per hour for 24.6 hours of work spent on Plaintiff's case. The Commissioner responded and does not contest the award of attorney's fees under the EAJA.

Under the EAJA, the court shall "award to a prevailing party . . . fees and other

expenses . . . incurred by that party in any civil action . . . , including proceedings for judicial review of agency action, brought by or against the United States . . . , unless the Court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). A social security plaintiff who obtains a sentence-four remand is a prevailing party under the EAJA. Shalala v. Schaefer, 509 U.S. 292, 300-02 (1993).

In this case, the Commissioner has acquiesced in an award of fees, thus conceding that her position was not substantially justified. The court also concludes that there are no special circumstances that would make an award unjust. Consequently, Plaintiff is entitled to an award of attorney fees. The motion for an award of attorney fees is GRANTED, and Plaintiff is awarded attorney fees in the amount of \$3,075.00.

IT IS SO ORDERED.

  
\_\_\_\_\_  
JAMES D. TODD  
UNITED STATES DISTRICT JUDGE  
  
  
\_\_\_\_\_  
DATE



## Notice of Distribution

This notice confirms a copy of the document docketed as number 21 in case 1:04-CV-01236 was distributed by fax, mail, or direct printing on July 13, 2005 to the parties listed.

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Honorable James Todd  
US DISTRICT COURT